

To: Chair Holvey and Members of the House Committee on Business and Labor
From: Coalition of Employer Representatives
Date: March 17, 2021
Re: Response to HB 2813

Thank you for the opportunity to present testimony regarding HB 2813. Our coalition represents a diverse group of Oregon sectors engaged in outdoor work activities—seasonal and year-round—subject to the regulations proposed in HB 2813. Many members of our coalition are familiar with California’s Wildfire Smoke Regulation and have been part of discussions with the state, in particular Oregon OSHA, regarding this same concept. We support the intent of this legislation to protect worker health during extreme wildfire smoke events, such as the devastating 2020 wildfires, but are concerned that aspects of the bill are impractical and duplicative of executive branch efforts. It is with this background that we share our recommended changes to HB 2813.

To start, the wildfire smoke program proposed by HB 2813 is duplicative of a rulemaking effort already underway at Oregon OSHA (OR-OSHA) to provide the same protection to employees. In March 2020, Governor Brown’s Executive Order 20-04 directed OR-OSHA and the Oregon Health Authority (OHA) to initiate rulemaking to protect employees from wildfire smoke and extreme outdoor heat. OR-OSHA convened the first rules advisory committee (RAC) meeting on March 4, 2021 to develop [rules to protect employees from wildfire smoke](#). OR-OSHA’s RAC process, comprised of 60 interested stakeholders, is running concurrently with the legislative session and already has scheduled a second meeting on March 25th with an anticipated final rule by September 30, 2021. Given this overlap, we encourage policymakers to choose one policy pathway on wildfire smoke, whether it is consensus legislation or the OR-OSHA/ OHA rulemaking, in order to avoid the creation of conflicting regulations.

If the Committee advances HB 2813 this session, our coalition respectfully asks for the opportunity to address the concerns below:

- **Covered Employees:** As drafted HB 2813 applies broadly to all employees and workplaces whenever work is conducted outside. The program scope should not exceed California’s rule, which provides exceptions for (1) enclosed buildings or structures with adequate ventilation, (2) enclosed vehicles, (3) when an employer demonstrates that AQI is less than 151 (4) employees who work outside for short durations of time, and (5) individuals engaged in firefighting.
- **PM2.5 Determination:** Many worksites across Oregon operate on staggered shifts. The mandate to determine PM 2.5 before every shift in Section 2(3)(a) will be impossible to implement. We suggest revising this section to provide a clear time period for determining PM2.5, for instance before the start of the first shift.
- **Data Sources:** HB 2813 should allow all employers to use existing government-provided AQI data sources or a device manufactured to measure the concentration of PM2.5, consistent with California’s Wildfire Smoke Regulation. Many employers operate at different worksites within the same county or even across several counties. It is important to maintain the ability to use a handheld PM2.5 measurement device for employers that operate in areas outside of the range of broadband or who choose to purchase the device. However, it is impractical to require an agricultural employer or construction contractor to purchase a device for use at each worksite (when there is no guarantee the device will work on the location) when the worksite coordinates could easily be used to determine local AQI on government-endorsed websites.
- **Posting and Notice:** We suggest deleting the requirement for a poster in the five most widely used non-English languages in Section 2(2)(c) as this is not practical. Instead, HB 2813 should adopt language applied in other Oregon labor laws: *“Notice provided to an employee under this section must be in the language the employer typically uses to communicate with the employee.”* Template posters and notice

language also must be provided by OR-OSHA and OHA so that employers are not responsible for confirming translation, determining public health risks related to PM2.5 or occupational health and safety tools available to workers.

- **Training:** OR-OSHA’s Respiratory Protection rule (and fit test requirements) currently applies to specific sectors, but not broadly to all workplaces. We suggest training curriculum similar to California’s [Appendix B](#), which has broader applicability. This can be directed to be established in rule via the legislation.
- **Emergencies:** We request an exemption for emergency situations, consistent with California, and when there is a critical supply shortage, such as what occurred with N95 masks during early days of the COVID-19 crisis.
- **Hierarchy of Controls:** We suggest deleting Section 2(2)(e)(A-B), as there is no threshold for regulation. This section is better provided as guidance in rulemaking, not statute.
- **Respiratory Protection:** Section 2(2)(b) should be amended to allow employers to accommodate emergency situations, religious objections, or to accommodate employee facial hair. The lack of exemptions has led to conflict between employees and employers in other jurisdictions.

Our coalition appreciates the opportunity to respond to HB 2813 today and share our thoughts to make this legislation more workable for employers, while protecting the health of our employees. We look forward to working with the sponsors on amendments to align more closely with California’s Wildfire Smoke Regulation and ensure that the final legislation is practical across a diversity of outdoor work situations.

